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No. 702

In the Supreme Court of the United States

OCTOBER TERM, 1958

ROBERT F. HINTON, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App.) is not yet reported. The opinion of the District Court denying petitioner's motion for a new trial is reported at 161 F. Supp. 266.

JURISDICTION

The judgment of the Court of Appeals was entered on December 4, 1958. A petition for rehearing was denied on January 13, 1959. The petition for a writ of certiorari was filed on February 12, 1959.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was probable cause to arrest petitioner.

2. Whether the Court of Appeals was required to make formal findings of fact and conclusions of law.

STATEMENT

On February 5, 1958, in the United States District Court for the District of Columbia, petitioner was found guilty, after trial before Judge Youngdahl sitting without a jury, on each count of a two count indictment charging him with narcotics violations (21 U.S.C., Supp. V, 174; 26 U.S.C., Supp. V, 4704 (a)) (R. 1, 4). Petitioner was sentenced to concurrent terms of 3 to 9 years (R. 5).

Before trial, petitioner made a motion to suppress as evidence the 6 capsules of heroin taken from him at the time of his arrest (R. 2-4). This motion was denied by the court on November 22, 1957 (R. 4). The motion was renewed at the trial and, since there was no jury, was considered along with the trial testimony. (R. 13-14) After conviction, petitioner moved for a new trial on the grounds that the arrest and search were illegal and, on April 16, 1958, in a memorandum opinion, the court denied the motion (R. 6-11; 161 F. Supp. 266). On appeal, petitioner's conviction was affirmed (Pet. App.).

The evidence may be summarized as follows:

In December, 1956, the Metropolitan Police learned that Joseph Davis, a major dealer in narcotics, was residing at 648 Lamont Street, N. W., Washington, D. C. (R. 20, 26, 38). From an informer the police learned that Davis was peddling narcotics from this address and that the way to gain entrance to Davis' residence was first to go to Banister's, the delicatessen next door, and place a phone call to 648 Lamont (R. 27, 29, 43). The police placed a watch on the Lamont address and observed the activities there intermittently for six months (R. 26, 28). In December, 1956, an informer, Charles Harden, notified police that he bought narcotics from Davis through Forest McAbee and later gave one of the capsules to petitioner, who, the police also learned, had been convicted in South Carolina in 1951 for narcotics violations (R. 18, 20-21, 26). One day later, agents of the Federal Bureau of Narcotics observed Davis and the petitioner leave 2529 11th Street and get into Forest McAbee's car (R. 22). They returned a half hour later. Davis and petitioner entered the 2529 address where Charles Harden purchased narcotics from Davis (*ibid.*). Later in 1956, petitioner told Harden that he might find Davis at Odessa Madre's, referring to a woman who previously had been convicted of narcotics violations and who was known to be involved in the narcotics traffic (R. 24, 29). Harden also revealed to police that on January 5, 1957, he purchased narcotics from another man in the presence of petitioner (R. 25-26). In February or March, 1957, the police learned through another informer that petitioner belonged to a club that met at mem-

bers' homes for the purpose of using narcotics illicitly (R. 41-42). Agent Wilson testified that a member of the club, Cornelius Parker, had revealed the purpose of the club to him and told him that petitioner was an active member (R. 42). Agent Wilson also testified that a girl friend of petitioner, Pearl Woodward, told him that she and petitioner were engaged in the narcotics traffic at petitioner's home (R. 40).[1]

At 10:30 p.m. on August 7, 1957, agents Thompson and Wilson of the Federal Bureau of Narcotics had Forest McAbee under surveillance (R. 32). They observed him drive to petitioner's home, pick up petitioner, and drive to 7th and T Streets, N. W., Washington, D. C., where he parked the car and both got out (*ibid.*). About twenty minutes later petitioner returned to the car alone. He entered the car and drove directly to Georgia Avenue and Lamont Street where he parked the car and entered Banister's Delicatessen (*ibid.*).[2] He stayed there for not more than 2 minutes, left, and entered 648 Lamont (*ibid.*). He stayed there approximately 5 minutes and then got into the car and drove away (*ibid.*). The agents followed him, and when he stopped for a red light, Agent Thompson entered the car, told petitioner he was under arrest, and asked him to pull over to

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[1] At the trial, Miss Woodward testified that she had spent nights in a hotel with petitioner and that on such occasions they used narcotics together (R. 46-47).

[2] Agent Wilson let Agent Thompson out of the car at Georgia Avenue and Lamont Street and actually saw petitioner "only briefly after he came out of Lamont St." and "was getting back into the automobile" (R. 43).

the curb. The agents found on petitioner's person 6 capsules containing a narcotic drug (R. 15-16).[3]

ARGUMENT

1. The court below properly held that there was probable cause for the arrest of petitioner and the search of his person incident to that arrest.

Although each isolated bit of information summarized in the Statement, *supra*, may not, in itself, have shown probable cause, when taken as a whole the pre-arrest circumstances "were sufficient in themselves to warrant a man of reasonable caution" to believe that petitioner had committed a felony. *Carroll* v. *United States*, 267 U.S. 132, 162; *Draper* v. *United States*, No. 136, this Term, decided January 26, 1959; *Brinegar* v. *United States*, 338 U.S. 160; *Husty* v. *United States*, 282 U.S. 694. The information given by the informants was checked against observation by the

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[3] The petitioner took the stand and admitted knowing Harden but denied ever having received narcotics from him (R. 47-48). He testified that he had used narcotics, that he had been at Banister's Delicatessen and at 648 Lamont Street on August 7, 1957, and that he had in his possession 6 capsules of narcotics when he was arrested. He maintained, however, that these capsules were purchased from a person named "Jim" at 7th and T Streets before he entered Davis's home (R. 48-51). Petitioner stated that he went into Banister's that night and bought cigarettes (R. 51-52). However, when petitioner was arrested he did not have any cigarettes on his person (R. 52).

The court below based its finding of probable cause on its own reading of the record and expressly disclaimed reliance on the absence of cigarettes from petitioner's person because "[a] post-arrest happening of this sort is not evidence of probable cause". (Pet. App. 2a)

officers and petitioner's activities were found to dovetail with the information which the officers had received. The arrest was therefore proper. *Draper* v. *United States, supra.*

2. Petitioner's contention that the Court of Appeals erred in failing to make findings of fact and conclusions of law is without merit. Rule 52(a) of the Federal Rules of Civil Procedure, which petitioner cites (Pet. 9), does not apply in a criminal case. Moreover, Rule 52(a) of the civil rules imposes the duty to make findings of fact and conclusions of law only upon the trial court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1959

U. S. GOVERNMENT PRINTING OFFICE 1959 490519 1125